

## SENATE BILL NO. 465

INTRODUCED BY TESTER, DEPRATU, LINDEEN, MENDENHALL

A BILL FOR AN ACT ENTITLED: "AN ACT CREATING THE MONTANA CAPITAL FORMATION ACT; PROVIDING ECONOMIC STIMULUS TO THE MONTANA ECONOMY AND BUSINESSES BY CREATING A MONTANA CAPITAL INVESTMENT BOARD; REQUIRING THE SELECTION AND DESIGNATION OF A MONTANA CAPITAL INVESTMENT ~~ADMINISTRATOR~~ CORPORATION TO ADMINISTER A MONTANA FUND OF FUNDS; AUTHORIZING THE ISSUANCE OF TAX CREDITS TO INVESTORS IN THE MONTANA FUND OF FUNDS; REQUIRING THE MONTANA CAPITAL INVESTMENT BOARD TO IMPOSE A FEE FOR ITS REASONABLE COSTS OF OPERATION; AUTHORIZING THE MONTANA CAPITAL INVESTMENT BOARD TO BORROW MONEY FROM THE MONTANA BOARD OF INVESTMENTS; AMENDING SECTION 30-10-104, MCA; AND PROVIDING AN EFFECTIVE DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. **Section 1. Short title.** [Sections 1 through 27] must be known as the "Montana Capital Formation Act".

NEW SECTION. **Section 2. Findings -- purpose.** (1) The legislature finds that:

(a) fundamental changes have occurred in national and international financial markets and in the financial markets of this state;

(b) a critical shortage of venture capital resources exists in the state, and the shortage is impairing the growth of commerce in the state;

(c) a need exists to increase the availability of venture capital for emerging, expanding, and restructuring enterprises in Montana, particularly seed capital and early-stage capital; and

(d) capital investments will create jobs for Montanans and will help to diversify the state's economic base.

(2) [Sections 1 through 27] are enacted for the following purposes:

(a) to mobilize private investment in a broad variety of venture capital partnerships in diversified industries and locales;

(b) to retain the private sector culture of focusing on rate of return in the investing process;

(c) to secure the services of the best managers in the venture capital industry, regardless of location;

(d) to facilitate the organization of the Montana fund of funds to seek private investments and to create interest in capital investments by offering state incentives for private persons or entities to make investments in the Montana fund of funds;

(e) to enhance the venture capital culture and infrastructure in the state of Montana in order to increase venture capital investment within the state and to promote venture capital investing within Montana;

(f) to accomplish these purposes in a manner that minimizes any appropriations by the state of Montana;

(g) to reach specific, measurable goals, including the following:

(i) the creation of three new venture capital offices in Montana within 3 years of [the effective date of this act];

(ii) the expansion of the capital base of existing Montana-based ~~capital~~ venture CAPITAL funds;

(iii) the investment of resources from the Montana fund of funds in Montana businesses within 3 years of [the effective date of this act]; and

(iv) a positive cumulative rate of return on venture CAPITAL investments of the Montana fund of funds.

**NEW SECTION. Section 3. Definitions.** As used in [sections 1 through 27], unless the context requires otherwise, the following definitions apply:

(1) "Board" means the Montana capital investment board created in [section 4].

(2) "Certificate" means a contract between the board and a designated investor pursuant to which a tax credit is available and issued to the designated investor.

(3) "Designated investor" means a person, other than the Montana capital investment ~~administrator~~ CORPORATION, who purchases an equity interest in the Montana fund of funds or a transferee of a certificate and related tax credit.

(4) "Montana capital investment ~~administrator~~ CORPORATION" means a private, nonprofit corporation that is selected and designated pursuant to [sections 15 and 16].

(5) "Montana fund of funds" means a program administered by the Montana capital investment ~~administrator~~ CORPORATION and in which a designated investor purchases an equity interest.

(6) "Rural business" means a business whose primary place of business and operations are located

outside the city limits of a city of the first class, as defined in 7-1-4111.

(7) "Small business" means a business that employs fewer than 75 full-time employees.

(8) "Tax credit" means a tax credit issued pursuant to [section 8] that is available against tax liabilities imposed by Title 15, chapter 30 or 31, and by 33-2-705.

(9) "Venture capital" means investment capital focused on emerging, expanding, or restructuring enterprises, including but not limited to seed capital and early-stage capital.

**NEW SECTION.** **Section 4. Montana capital investment board.** (1) There is a Montana capital investment board vested with the powers enumerated in [sections 1 through 27] to implement the public purposes described in [section 2] and to mobilize venture capital for investment in a manner that will result in a significant potential to create higher-paying jobs and to diversity and stabilize the economy of this state.

(2) The board is attached to the department of commerce for administrative purposes as provided in 2-15-121.

(3) The board consists of five voting members. Three members must be appointed by the governor, and two members must be appointed by the state auditor. Members must be selected based upon demonstrated expertise and competence in the supervision of investment managers, in the fiduciary management of investment funds, or in the management and administration of tax credit allocation programs. Members may not have an interest in any person to whom a tax credit is allocated and issued by the board.

(4) BOARD MEMBERS SHALL SERVE STAGGERED 4-YEAR TERMS. A TERM BEGINS ON THE FIRST DAY OF THE CALENDAR YEAR AND ENDS ON THE LAST DAY OF THE CALENDAR YEAR OR WHEN A SUCCESSOR IS APPOINTED. A MEMBER WHO HAS SERVED TWO SUCCESSIVE COMPLETE TERMS IS NOT ELIGIBLE FOR REAPPOINTMENT UNTIL 1 YEAR AFTER THE END OF THE SECOND TERM.

(5) THE APPOINTING AUTHORITY MAY, AFTER HEARING, REMOVE A MEMBER FOR NEGLECT OF DUTY OR OTHER JUST CAUSE.

~~(4)~~(6) Vacancies must be filled in the same manner as the appointment of the original members.

~~(5)~~(7) Members must be compensated for expenses and mileage, as provided in Title 2, chapter 18, part 5, but members may not receive a director's fee, per diem, or salary for service on the board.

~~(6)~~(8) Members of the board must be indemnified against loss to the broadest extent possible, as provided in Title 2, part 9.

(9) EACH CALENDAR YEAR, THE LEGISLATIVE AUDITOR SHALL CONDUCT AN AUDIT OF THE ACTIVITIES OF THE

1 BOARD. THE BOARD SHALL REIMBURSE THE AUDITOR FOR COSTS ASSOCIATED WITH THE ANNUAL AUDIT. THE AUDIT MUST  
2 BE DELIVERED TO THE BOARD, THE GOVERNOR, AND THE STATE AUDITOR.

3  
4 NEW SECTION. Section 5. General powers of board -- fee -- loan. (1) The board may engage  
5 consultants, expend funds, ~~invest funds~~, contract, bond or insure against loss, or perform any other act  
6 necessary to carry out its purpose.

7 (2) The board may borrow operating capital from the board of investments pursuant to Title 17, chapter  
8 5, part 16.

9 (3) The board may also accept private contributions, in-kind or otherwise, to effectuate its purpose.

10 (4) The board shall charge a placement fee for issuance of a certificate and a related tax credit to a  
11 designated investor. The fee must be an amount necessary to pay for the reasonable and necessary costs of  
12 the board. The fee may not exceed 0.5% of the investment of the designated investor.

13  
14 NEW SECTION. Section 6. Board meetings -- confidentiality. Meetings of the board must be public,  
15 except to the extent necessary to protect private, confidential information with respect to investments in the  
16 Montana fund of funds, and are subject to the provisions of Title 2, chapter 3.

17  
18 NEW SECTION. Section 7. Criteria for tax credits. (1) The board, in cooperation with the department  
19 of revenue, shall establish criteria and procedures for the allocation and issuance of tax credits to designated  
20 investors by means of certificates issued by the board.

21 (2) The criteria must include the contingencies that must be met for a certificate to be redeemable by  
22 a designated investor or transferee in order to receive a tax credit.

23 (3) The contingencies for redemption of the certificate must be tied to the scheduled rates of return and  
24 scheduled redemptions of the amount of principal invested by designated investors in the Montana fund of funds.

25 (4) The procedures established by the board, in cooperation with the department of revenue, must  
26 provide the procedures for:

27 (a) the issuance of the certificates and the related tax credits:

28 (b) the transfer of a certificate and related tax credit by a designated investor; and

29 (c) the redemption of a certificate and related tax credit by a designated investor or transferee.

30 (5) The board shall also establish criteria and procedures for assessing the likelihood of future certificate

1 redemptions by designated investors and transferees, including without limitation criteria and procedures for  
2 evaluating the value of investments made by the Montana fund of funds and the returns from the Montana fund  
3 of funds.

4  
5 **NEW SECTION. Section 8. Tax credit certificates.** (1) The board shall issue certificates that may be  
6 redeemable for tax credits to provide incentives to designated investors to make equity investments in the  
7 Montana fund of funds.

8 (2) The board shall indicate on the certificate the amount of the tax credit and the tax year or years for  
9 which the credit may be claimed.

10  
11 **NEW SECTION. Section 9. Annual report.** (1) The board shall publish an annual report of the  
12 activities conducted by the Montana capital investment ~~administrator~~ CORPORATION and present the report to the  
13 governor and the legislature.

14 (2) The annual report must:

15 (a) include a copy of the audit of the Montana capital investment ~~administrator~~ CORPORATION and the  
16 Montana fund of funds and a valuation of the assets of the Montana fund of funds;

17 (b) review the progress of the venture capital investment fund allocation manager in implementing its  
18 investment plan; and

19 (c) describe any redemption or transfer of a certificate issued pursuant to [sections 1 through 27].

20 (3) The annual report may not identify any specific designated investor who has redeemed or  
21 transferred a certificate.

22 (4) Every 5 years, the board shall publish a progress report that evaluates the progress of the state in  
23 accomplishing the purposes stated in [section 2].

24  
25 **NEW SECTION. Section 10. Tax credits -- calculation and certification by board.** (1) The board  
26 shall certify the maximum amount of a tax credit that could be issued in the form of a certificate to a designated  
27 investor and identify the specific calendar year in which the certificate may be redeemed pursuant to [sections  
28 1 through 27].

29 (2) The amount of the tax credit is limited to an amount equivalent to any difference between the  
30 scheduled aggregate return to the designated investor, at rates of return authorized by the board, and the

1 aggregate actual return received by the designated investor and any predecessor in interest of capital and  
2 interest on the capital investment. THE SCHEDULED AGGREGATE RETURN TO THE INVESTOR MAY NOT EXCEED AN  
3 AMOUNT EQUAL TO THE RATE OF RETURN FOR THE 10-YEAR U.S. TREASURY BILLS PLUS 400 BASIS POINTS. THE RATE  
4 IS SUBJECT TO APPROVAL OF THE BOARD OF INVESTMENTS, WHICH SHALL REVIEW THE RATE FOR FINANCIAL PRUDENCE.

5 (3) The rates of return, whether fixed rates or variable rates, must be determined pursuant to a formula  
6 stipulated in the certificate.

7 (4) The board shall clearly indicate on the certificate the:

8 (a) scheduled aggregate return;

9 (b) amount of principal invested in the Montana fund of funds;

10 (c) calculation formula for determining the scheduled aggregate return on invested capital; and

11 (d) calculation formula for determining the amount of the tax credit that may be claimed.

12 (5) After money is invested by a designated investor, the certificate is binding on the board and the  
13 department of revenue and may not be modified, terminated, or rescinded.

14  
15 **NEW SECTION. Section 11. General provisions relating to tax certificates.** (1) The board may  
16 issue certificates and related tax credits to designated investors that, if redeemed for the maximum possible  
17 amount, do not exceed a total aggregate of \$50 million of tax credits and may issue no more than \$10 million  
18 in certificates and related tax credits in any fiscal year.

19 (2) In determining the \$50 million aggregate maximum and the \$10 million limitation, the board shall  
20 use the cumulative amount of scheduled aggregate returns on certificates issued by the board to designated  
21 investors, excluding certificates and related tax credits that have expired and including certificates and related  
22 tax credits that have been redeemed but only to the extent of tax credits actually allowed.

23 (3) A certificate and the related tax credit must be transferable by the designated investor.

24 (4) The certificates must:

25 (a) be issued contemporaneously with an investment in the Montana fund of funds;

26 (b) have a specific calendar year maturity date designated by the board of not less than 5 years after  
27 the date of issuance;

28 (c) be redeemable on a schedule similar to the scheduled redemption of investments by designated  
29 investors; and

30 (d) indicate the principal amount of the tax credit and the tax year or years for which the credit may be

1 claimed.

2 (5) A tax credit may not be claimed or redeemed except by a designated investor or transferee in  
3 accordance with the terms of the certificate issued by the board.

4 (6) A tax credit must be claimed for a tax year that begins during the calendar year maturity date stated  
5 in the certificate.

6 (7) ~~An individual~~ A DESIGNATED INVESTOR may claim the credit of a partnership, limited liability company,  
7 C. corporation, S. corporation, estate, or trust electing to have income taxed directly to the individual. The  
8 amount claimed by the individual must be based upon the pro rata share of the individual's earnings from the  
9 partnership, limited liability company, C. corporation, S. corporation, estate, or trust. Any tax credit in excess of  
10 the taxpayer's tax liability for the tax year may be credited to the tax liability for the following 7 years or until  
11 depleted, whichever is earlier.

12  
13 **NEW SECTION. Section 12. Redemption of tax credit certificate.** (1) The board shall redeem a  
14 certificate submitted to the board by a designated investor. The board shall calculate the amount of the allowable  
15 tax credit based upon the:

16 (a) investment returns received by the designated investor and the designated investor's predecessors  
17 in interest; and

18 (b) provisions of the certificate.

19 (2) Upon submission of a certificate for redemption, the board shall issue a verification to the  
20 department of revenue setting forth the maximum tax credit that may be claimed by the designated investor with  
21 respect to the redemption of the certificate.

22 (3) If a designated investor elects to redeem a certificate, the certificate must be redeemed ~~on~~ BY June  
23 30 of the calendar year maturity date stated on the certificate.

24  
25 **NEW SECTION. Section 13. Rulemaking authority -- development of tax certificate.** The board,  
26 in consultation with the department of revenue, shall adopt rules necessary to administer [sections 1 through  
27 27], including but not limited to procedures:

28 (1) for registration of any certificate and related tax credit issued or transferred pursuant to [sections  
29 1 through 27];

30 (2) that permit verification that any tax credit claimed upon a tax return is valid; and

(3) that require any transfers of the certificate and related tax credit to be made in accordance with the requirements of [sections 1 through 27].

**NEW SECTION. Section 14. Certificate or tax credit -- not security.** A certificate and related tax credit issued or transferred pursuant to [sections 1 through 27] may not be considered a security pursuant to Title 30, chapter 10.

**NEW SECTION. Section 15. Montana capital investment ~~administrator~~ CORPORATION.** (1) A private, nonprofit corporation established pursuant to Title 35, chapter 2, must be selected in accordance with [section 16] and this section as the Montana capital investment ~~administrator~~ CORPORATION.

(2) The Montana capital investment ~~administrator~~ CORPORATION may not be considered an instrumentality of the state of Montana and may not have or be required to comply with any of the privileges or obligations of a state agency.

(3) Except as otherwise provided in [sections 1 through 27], the Montana capital investment ~~administrator~~ CORPORATION is not exempt from the requirements under state law that apply to other corporations organized under Title 35, chapter 2.

(4) The purposes of the Montana capital investment ~~administrator~~ CORPORATION are:

(a) to organize the Montana fund of funds;

(b) to select a venture capital investment fund allocation manager who selects the venture capital fund investments for the Montana fund of funds;

(c) to negotiate the terms of the contract with the venture capital investment fund allocation manager and execute the contract on behalf of the fund of funds;

(d) to oversee the receipt of investment returns from the Montana fund of funds; and

(e) to oversee the reinvestment of the investment returns as described in [section 20(3)].

(5) The Montana capital investment ~~administrator~~ CORPORATION may not exercise governmental functions and may not have members.

(6) The obligations of the Montana capital investment ~~administrator~~ CORPORATION are not obligations of this state or any political subdivision of this state within the meaning of any constitutional or statutory debt limitations, but are obligations of the Montana capital investment ~~administrator~~ CORPORATION payable solely from the Montana capital investment ~~administrator's~~ CORPORATION'S funds.



(7) The Montana capital investment ~~administrator~~ CORPORATION may not pledge the credit or taxing power of this state or any political subdivision of this state or make its debts payable out of any money except that of the Montana capital investment ~~administrator~~ CORPORATION.

**NEW SECTION. Section 16. Selection of Montana capital investment ~~administrator~~ CORPORATION.**

~~(1) To facilitate the selection and designation of the Montana capital investment administrator, a selection committee must be formed.~~

~~——— (2) The selection committee must consist of three members. The governor shall appoint two members and the state auditor shall appoint one member.~~

**(1) THE BOARD SHALL SELECT AND DESIGNATE THE MONTANA CAPITAL INVESTMENT CORPORATION.**

~~(3)(2)~~ The board of directors of the entity selected as the Montana capital investment ~~administrator~~ CORPORATION shall consist of five members who have expertise in the areas of the selection and supervision of investment managers or in the fiduciary management of investment funds and in other areas of expertise as considered appropriate by the ~~committee~~ MONTANA CAPITAL INVESTMENT BOARD.

~~(4)(3)~~ Members of the board of directors of the selected entity must be subject to any restrictions on conflicts of interest specified in the organizational documents and may not have an interest in any venture capital investment fund allocation manager selected by the Montana capital investment ~~administrator~~ CORPORATION pursuant to the provisions of [sections 1 through 27] or in any investments made by the Montana fund of funds.

~~(5)(4)~~ The ~~members of the selection committee~~ BOARD shall exercise due care to ensure that persons on the board of directors have the requisite financial experience necessary to carry out the duties of the Montana capital investment ~~administrator~~ CORPORATION as established in [sections 1 through 27], including experience in areas related to venture capital investment, investment management, and supervision of investment managers and investment funds.

~~(6) Upon the selection of the Montana capital investment administrator, the selection committee terminates.~~

~~(7)(5)~~ The department of commerce shall assist the ~~selection committee~~ BOARD in any manner determined necessary by the ~~selection committee~~ BOARD in order to administer this section.

~~(8)(6)~~ Directors of the Montana capital investment ~~administrator~~ CORPORATION must be compensated for direct expenses and mileage but may not receive a director's fee or salary for service as directors.

1        **NEW SECTION. Section 17. Selection of fund manager.** (1) After its selection, the Montana capital  
2 investment ~~administrator~~ CORPORATION shall conduct a national solicitation for investment plan proposals from  
3 qualified venture capital investment fund allocation managers for the raising and investment of capital by the  
4 Montana fund of funds in accordance with the requirements of [sections 1 through 27].

5        (2) A proposed investment plan must address the applicant's level of experience, quality of  
6 management, investment philosophy and process, probability of success in fundraising, prior investment fund  
7 results, as well as the amount of the proposed management fee and the plan for achieving the purposes of  
8 [sections 1 through 27].

9        (3) The selected venture capital investment fund allocation manager must be a person with substantial,  
10 successful experience in the design, implementation, and management of seed capital and venture capital  
11 investment programs and in capital formation. The Montana capital investment ~~administrator~~ CORPORATION shall  
12 select a venture capital investment fund allocation manager with demonstrated expertise in the management  
13 and fund allocation of investments in venture capital funds.

14        (4) The Montana capital investment ~~administrator~~ CORPORATION shall select the venture capital  
15 investment fund allocation manager considered best qualified to generate the amount of capital required by  
16 [sections 1 through 27] and to invest the capital of the Montana fund of funds.

17  
18        **NEW SECTION. Section 18. Management fee.** The Montana capital investment ~~administrator~~  
19 CORPORATION and venture capital investment fund allocation manager may each charge a management fee on  
20 assets under management in the Montana fund of funds that is consistent with the standard and prevailing fee  
21 charged by similar persons or entities and that is approved by the board.

22  
23        **NEW SECTION. Section 19. Montana fund of funds -- creation.** (1) The Montana capital investment  
24 ~~administrator~~ CORPORATION, in consultation with the board, shall create and organize the Montana fund of funds.

25        (2) The purpose of the Montana fund of funds is to make investments in private seed capital and  
26 venture capital partnerships or entities in a manner that will encourage the availability of a wide variety of venture  
27 capital in the state, strengthen the economy of the state, help business in the state gain access to sources of  
28 capital, help build a significant, permanent source of capital available to serve the needs of businesses in the  
29 state, and accomplish all these benefits in a way that minimizes the use of tax credits.

1        NEW SECTION. Section 20. Montana capital investment ~~administrator~~ CORPORATION and fund of

2 **funds.** (1) The Montana capital investment ~~administrator~~ CORPORATION shall administer and manage the  
3 Montana fund of funds. The Montana capital investment ~~administrator~~ CORPORATION shall receive the investment  
4 returns of the Montana fund of funds in excess of those payable to designated investors.

5        (2) The Montana capital investment ~~administrator~~ CORPORATION shall administer the Montana fund of  
6 funds in a manner that provides designated investors with a designated scheduled rate of return and a  
7 scheduled redemption, which must occur not less than 5 years following the initial principal investment.

8        (3) Except as provided in subsection (4), any returns in excess of those payable to designated investors  
9 must be reinvested by the Montana capital investment ~~administrator~~ CORPORATION by being held in the Montana  
10 fund of funds as a revolving fund for reinvestment in venture capital funds or investments until the termination  
11 of the Montana fund of funds. Any returns received from these reinvestments must be deposited in the revolving  
12 fund. The Montana capital investment ~~administrator~~ CORPORATION shall ~~consider investment~~ INVEST AT LEAST  
13 50% OF THE ASSETS OF THE REVOLVING FUND in Montana businesses ~~in the placement of the reinvestments, to the~~  
14 ~~extent that~~ IF the investments are reasonably prudent and financially responsible.

15        (4) The Montana capital investment ~~administrator~~ CORPORATION may negotiate with designated investors  
16 to allow participation in the excess earnings of the fund of funds, but the total participation may not exceed 5%  
17 of the excess earnings in a year.

18        (5) EVERY 3 YEARS, THE BOARD SHALL CONDUCT A REVIEW OF THE OPERATIONS OF THE MONTANA CAPITAL  
19 INVESTMENT CORPORATION FOR THE PURPOSE OF ENSURING THAT THE MONTANA CAPITAL INVESTMENT CORPORATION  
20 IS PROPERLY OVERSEEING THE MANAGEMENT OF THE MONTANA FUND OF FUNDS. IF AFTER CONDUCTING A REVIEW, THE  
21 BOARD DETERMINES THAT THE MONTANA CAPITAL INVESTMENT CORPORATION IS DEFICIENT IN OVERSEEING THE  
22 MANAGEMENT OF THE MONTANA FUND OF FUNDS, THE BOARD SHALL INFORM THE MONTANA CAPITAL INVESTMENT  
23 CORPORATION OF ALL DEFICIENCIES. THE BOARD SHALL CONDUCT ANOTHER REVIEW WITHIN 1 YEAR TO DETERMINE IF  
24 THE DEFICIENCIES HAVE BEEN CORRECTED.

25        (6) IF THE INITIAL REVIEW REVEALS DEFICIENCIES CONSIDERED BY THE BOARD TO BE SERIOUS IN NATURE OR  
26 IF THE SUBSEQUENT REVIEW INDICATES THE MONTANA CAPITAL INVESTMENT CORPORATION HAS FAILED TO CORRECT THE  
27 IDENTIFIED DEFICIENCIES, THE BOARD MAY REMOVE THE MONTANA CAPITAL INVESTMENT CORPORATION.

28        (7) IF THE MONTANA CAPITAL INVESTMENT CORPORATION IS REMOVED, THE BOARD SHALL CONDUCT A SEARCH  
29 TO NAME A NEW ENTITY TO BE THE MONTANA CAPITAL INVESTMENT CORPORATION.

1        **NEW SECTION. Section 21. Fund of fund investments -- Montana business and presence.** (1) In

2        administering the Montana fund of funds, the Montana capital investment ~~administrator~~ CORPORATION shall  
3        ensure that the Montana fund of funds principally makes investments in high-quality venture capital funds  
4        managed by investment managers that have made a commitment to consider equity investments in businesses  
5        located within the state and that have committed to maintaining a physical presence within the state. Physical  
6        presence ~~may be~~ is established by locating a business office in the state ~~or coming to the state on a regular~~  
7        ~~basis, but no less than twice a year,~~ AND AGREEING to seek out and invest in businesses that have their principal  
8        place of business in Montana. IF A VENTURE CAPITAL FUND CEASES TO HAVE A PRESENCE IN MONTANA, THE VENTURE  
9        CAPITAL FUND SHALL PERMIT THE MONTANA FUND OF FUNDS TO REMOVE ITS INVESTMENT IN THE VENTURE CAPITAL FUND  
10       AND THE VENTURE CAPITAL FUND SHALL RETURN TO THE MONTANA FUND OF FUNDS ITS ORIGINAL INVESTMENT AT ITS  
11       PRESENT VALUE.

12        (2) The investments by the Montana fund of funds must be limited principally to partnership interests  
13        in private venture capital funds.

14        (3) The Montana fund of funds shall invest in venture capital funds with experienced managers or  
15        management teams with demonstrated expertise and a successful history in the investment of venture capital  
16        funds. ANY VENTURE CAPITAL FUND IN WHICH THE MONTANA FUND OF FUND INVESTS SHALL ON AN ANNUAL BASIS  
17       PROVIDE WRITTEN DOCUMENTATION OF THE PERFORMANCE OF THE FUND TO THE VENTURE CAPITAL INVESTMENT FUND  
18       ALLOCATION MANAGER.

19        (4) The Montana fund of funds may invest in newly created venture capital funds as long as the  
20        managers or management teams of the funds have the experience, expertise, and a successful history in the  
21        investment of venture capital funds described in this section.

22        (5) The Montana capital investment ~~administrator~~ CORPORATION shall establish a program through the  
23        Montana fund of funds to allow equity investments in rural businesses or small businesses in the state. No more  
24        than 5% of the assets in the Montana fund of funds may be invested in this program.

26        **NEW SECTION. Section 22. Administration of Montana fund of funds.** (1) In administering the  
27        Montana fund of funds, the Montana capital investment ~~administrator~~ CORPORATION may engage consultants,  
28        expend funds, invest funds, contract, bond, or insure against loss, or perform any other act necessary to carry  
29        out the purpose of the Montana fund of funds, including without limitation engaging and agreeing to compensate  
30        a venture capital investment fund allocation manager.

(2) The compensation of the venture capital investment fund allocation manager must be in addition to the management fee paid to the Montana capital investment ~~administrator~~ CORPORATION.

(3) The Montana capital investment ~~administrator~~ CORPORATION may issue debt and borrow funds as may be needed to accomplish the goals of the Montana fund of funds. However, the debt may not be secured by tax credits issued by the board.

(4) The Montana capital investment ~~administrator~~ CORPORATION may open and manage bank and short-term investment accounts as considered necessary by the venture capital investment fund allocation manager.

(5) The Montana capital investment ~~administrator~~ CORPORATION may expend money to secure investment ratings for investments by designated investors in the Montana fund of funds.

**NEW SECTION. Section 23. Fund of funds -- audit by legislative auditor.** (1) Each calendar year, ~~the legislative auditor shall conduct an audit of the activities of the Montana capital investment administrator or~~ CORPORATION shall engage an independent auditor to conduct the AN audit OF THE ACTIVITIES OF THE MONTANA CAPITAL INVESTMENT CORPORATION as long as the independent auditor has no business, contract, or other connection with the Montana capital investment ~~administrator~~ CORPORATION.

(2) The Montana capital investment ~~administrator~~ CORPORATION shall reimburse the auditor for costs associated with the annual audit. The audit must be delivered to the Montana capital investment ~~administrator~~ and CORPORATION, the board, THE GOVERNOR, AND THE STATE AUDITOR each year and must include a valuation of the assets owned by the Montana fund of funds as of the end of each year.

**NEW SECTION. Section 24. Montana fund of funds -- termination and liquidation.** (1) Fifty years after the organization of the Montana fund of funds, the Montana capital investment ~~administrator~~ CORPORATION shall cause the Montana fund of funds to be liquidated.

(2) Upon the dissolution of the Montana fund of funds, the Montana capital investment ~~administrator~~ CORPORATION may no longer serve in that capacity. Any assets of the Montana capital investment ~~administrator~~ CORPORATION accumulated or acquired through the operation of the Montana fund of funds pursuant to [sections 1 through 27] and not obligated to designated investors must be distributed to the state and deposited in the general fund.

(3) Upon the liquidation of the Montana fund of funds, the Montana capital investment ~~administrator~~

CORPORATION shall file a report with the legislature stating how many jobs in this state were created through investments made by the Montana fund of funds.

**NEW SECTION. Section 25. Cumulative powers of board -- construction.** (1) [Sections 1 through 27] may not be construed as a restriction or limitation upon any power that the board might otherwise have under any other law of this state, and the provisions of [sections 1 through 27] are cumulative to those powers.

(2) [Sections 1 through 27] must be construed to provide a complete, additional, and alternative method for performing the duties authorized and must be considered as supplemental and in addition to powers conferred by any other laws.

(3) The level, timing, or degree of success of the Montana capital investment ~~administrator~~ CORPORATION, the Montana fund of funds, or the investment funds in which the Montana fund of funds invests or the extent to which the investment funds are invested in Montana venture capital projects or are successful in accomplishing any economic development objectives may not compromise, diminish, invalidate, or affect the provisions of any contract entered into by the board or the Montana capital investment ~~administrator~~ CORPORATION.

**NEW SECTION. Section 26. Permissible investment by banks, credit unions, insurance companies, and board of investments.** Investments in the Montana fund of funds are considered permissible investments for state-chartered banks, credit unions, domestic insurance companies, and the board of investments under applicable state laws.

**NEW SECTION. Section 27. Enforcement.** The attorney general may enforce the provisions of [sections 1 through 27] and conduct any investigations necessary for that enforcement.

**Section 28.** Section 30-10-104, MCA, is amended to read:

**"30-10-104. Exempt securities.** Sections 30-10-202 through 30-10-207 and 30-10-211 do not apply to any of the following securities:

(1) any security, including a revenue obligation, issued or guaranteed by the United States, any state, any political subdivision of a state, or any agency or corporate or other instrumentality of one or more of the foregoing; provided, however, 30-10-202 through 30-10-207 and 30-10-211 apply to a security issued by any

1 of the foregoing that is payable solely from payments to be received in respect of property or money used under  
2 a lease, sale, or loan arrangement by or for a nongovernmental industrial or commercial enterprise, unless the  
3 enterprise or any security of which it is the issuer is within any of the exemptions enumerated in subsections (2)  
4 through (15) ~~of this section~~;

5 (2) any security issued or guaranteed by Canada, a Canadian province, a political subdivision of a  
6 province, or an agency or corporate or other instrumentality of one or more of the foregoing or any other foreign  
7 government with which the United States currently maintains diplomatic relations if the security is recognized  
8 as a valid obligation by the issuer or guarantor;

9 (3) any security issued by and representing an interest in or a debt of or guaranteed by a bank  
10 organized under the laws of the United States or a bank, savings institution, or trust company organized and  
11 supervised under the laws of any state;

12 (4) any security issued by and representing an interest in, or a debt of, or guaranteed by a federal  
13 savings and loan association or a building and loan or similar association organized under the laws of any state  
14 and authorized to do business in this state;

15 (5) any security issued or guaranteed by a federal credit union or a credit union, industrial loan  
16 association, or similar association organized and supervised under the laws of this state;

17 (6) any security issued or guaranteed by a railroad, other common carrier, public utility, or holding  
18 company that is:

19 (a) subject to the jurisdiction of the interstate commerce commission;

20 (b) a registered holding company under the Public Utility Holding Company Act of 1935 or a subsidiary  
21 of a registered holding company within the meaning of that act;

22 (c) regulated in respect of its rates and charges by a governmental authority of the United States or any  
23 state or municipality; or

24 (d) regulated in respect to the issuance or guarantee of the security by a governmental authority of the  
25 United States, any state, Canada, or any Canadian province; also equipment trust certificates in respect to  
26 equipment conditionally sold or leased to a railroad or public utility if other securities issued by the railroad or  
27 public utility would be exempt under this subsection;

28 (7) any security that meets all of the following conditions:

29 (a) if the issuer is not organized under the laws of the United States or a state, it has appointed an  
30 authorized agent in the United States for service of process and has set forth the name and address of the agent

1 in its prospectus;

2 (b) a class of the issuer's securities is required to be and is registered under section 12 of the Securities  
3 Exchange Act of 1934 and has been registered for the 3 years immediately preceding the offering date;

4 (c) the issuer or a significant subsidiary has not had a material default during the last 7 years, or during  
5 the issuer's existence if that period is less than 7 years, in the payment of:

6 (i) principal, interest, dividend, or sinking fund installment on preferred stock or indebtedness for  
7 borrowed money; or

8 (ii) rentals under leases with terms of 3 years or more;

9 (d) the issuer has had consolidated net income, before extraordinary items and the cumulative effect  
10 of accounting changes, of at least \$1 million in 4 of its last 5 fiscal years, including its last fiscal year; and, if the  
11 offering is of interest-bearing securities, has had for its last fiscal year such net income, but before deduction  
12 for income taxes and depreciation, of at least 1 1/2 times the issuer's annual interest expense, giving effect to  
13 the proposed offering and the intended use of the proceeds. "Last fiscal year", as used in this subsection (7)(d),  
14 means the most recent year for which audited financial statements are available, provided that the statements  
15 cover a fiscal period that ended not more than 15 months from the commencement of the offering.

16 (e) if the offering is of stock or shares, other than preferred stock or shares, the securities have voting  
17 rights and rights including the right to have at least as many votes per share and the right to vote on at least as  
18 many general corporate decisions as each of the issuer's outstanding classes of stock or shares, except as  
19 otherwise required by law;

20 (f) if the offering is of stock or shares, other than preferred stock or shares, the securities are owned  
21 beneficially or of record on any date within 6 months prior to the commencement of the offering by at least 1,200  
22 persons and on that date there are at least 750,000 of the shares outstanding with an aggregate market value,  
23 based on the average bid price for that day, of at least \$3,750,000. In connection with the determination of the  
24 number of persons who are beneficial owners of the stock or shares of an issuer, the issuer or broker-dealer may  
25 rely in good faith for the purposes of this section upon written information furnished by the record owners.

26 (8) any security issued by any person organized and operated not for private profit but exclusively for  
27 religious, educational, benevolent, charitable, fraternal, social, athletic, or reformatory purposes if the issuer pays  
28 a fee of \$50 and files with the commissioner 20 days prior to the offering a written notice specifying the terms  
29 of the offer and the commissioner does not disallow the exemption in writing within the 20-day period;

30 (9) any commercial paper that arises out of a current transaction or the proceeds of which have been  
31 or are to be used for the current transaction and that evidences an obligation to pay cash within 9 months of the



1 date of issuance, exclusive of days of grace, or any renewal of the paper that is likewise limited or any guarantee  
2 of the paper or of any renewal, when the commercial paper is sold to banks or insurance companies;

3 (10) any investment contract issued in connection with an employee's stock purchase, savings, pension,  
4 profit-sharing, or similar benefit plan;

5 (11) any security for which the commissioner determines by order that an exemption would better serve  
6 the purposes of 30-10-102 than would registration. The fee for this exemption must be as prescribed in  
7 30-10-209(4).

8 (12) any security listed or approved for listing upon notice of issuance on the New York stock exchange,  
9 the American stock exchange, the Pacific stock exchange, the Midwest stock exchange, the Chicago board of  
10 options exchange, the Philadelphia stock exchange, the Boston stock exchange, or any other stock exchange  
11 registered with the federal securities and exchange commission and approved by the commissioner; any other  
12 security of the same issuer that is of senior or substantially equal rank; any security called for by subscription  
13 rights or warrants so listed or approved; or any warrant or right to purchase or subscribe to any of the foregoing.  
14 The commissioner may by rule or order limit, restrict, or otherwise condition the terms under which any security  
15 may be exempt under this subsection.

16 (13) any national market system security listed or approved for listing upon notice of issuance on the  
17 national association of securities dealers automated quotation system or any other national quotation system  
18 approved by the commissioner; any other security of the same issuer that is of senior or substantially equal rank;  
19 any security called for by subscription rights or warrants so listed or approved; or any warrant or right to purchase  
20 or subscribe to any of the securities listed in this subsection. The commissioner may by rule or order limit,  
21 restrict, or otherwise condition the terms under which any security may be exempt under this subsection.

22 (14) any security issued by and representing an interest in, or a debt of, or any security guaranteed by  
23 any insurer organized and authorized to transact business under the laws of any state;

24 (15) any security for which an offer or sale is not directed to or received by a person in this state, and  
25 the issuer does not maintain a place of business in the state;

26 (16) a certificate issued pursuant to [sections 1 through 27]."  
27

28 **NEW SECTION. Section 29. Codification instruction.** [Sections 1 through 27] are intended to be  
29 codified as an integral part of Title 90, and the provisions of Title 90 apply to [sections 1 through 27].  
30

31 **NEW SECTION. Section 30. Severability.** If a part of [this act] is invalid, all valid parts that are

1 severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications,  
2 the part remains in effect in all valid applications that are severable from the invalid applications.

3

4 NEW SECTION. **Section 31. Effective date.** [This act] is effective July 1, 2003.

5 - END -